rebuilding on the site or part thereof. The question that arises for determination in this case is whether the plaintiffs have satisfied the Court that such demolition is necessary in the interests of town improvement.

Now it is clear from the evidence of Mr. Ho Kok Hoe and Mr. Ephraums, who is an officer of the Rural Board, that the plaintiffs' lay-out plans relating to the two blocks of 13 and 14 shop-houses respectively and the market had been approved by the Singapore Improvement Trust. It was only after they had been so approved that they were sent to the Rural Board. That was the procedure as described by Mr. Ephraums who added that the plans now form part of the General Improvement Plan. There is statutory authority for Mr. Ephraums' statement as it is provided by sub-section (8) of section 62 of the Singapore Improvement Ordinance (Cap.259) that when any plan has been aproved by the Board of Trustees of the Singapore Improvement Trust under that section, the Board shall forthwith embody such plan in the General Improvement Plan. It is of some significance, in my view, that the General Improvement Plan has been given that name by the legislature. Having regard to these considerations, it is clear, in my opinion, that when a lay-out plan has been approved by the Singapore Improvement Trust and embodied in the General Improvement Plan the new lay-out must be taken to be *prima facie* an improvement on the existing lay-out in Singapore. It does not matter, in my view, whether the plan or scheme was initiated by a local authority or a private individual. Once the plan has been approved and embodied in the General Improvement Plan the result which I have stated follows. It is of course open to any litigant to show that in fact the new lay-out does not constitute an improvement in town planning, or, to use the words of paragraph (k), a town improvement. In the present case the defendant has failed to do so. It would have been surprising if she had succeeded in doing so as it is clear that the replacement of the buildings now standing on the site by two blocks of shop-houses and a market with proper road access must result in town improvement. A comparison of the existing buildings with what is proposed to be erected can only lead to the conclusion that they should be demolished in the interests of town improvement. I am satisfied that the demolition of the existing buildings is necessary in the interests of town improvement.

It follows from the conclusions which I have reached that the plaintiffs have brought themselves within paragraphs (i) and (k) of section 15 (1) of the Control of Rent Ordinance. There must therefore be judgment for the plaintiffs with costs, the defendant to give possession of the premises to the plaintiffs on or before the 31st July 1958. There will also be judgment for the plaintiffs for mesne profits at the rate of $260 per mensem from the 1st May 1958 up to the date of delivery up of possession to the plaintiffs. There will be a declaration that this judgment shall not be enforceable against any sub-tenant of the defendant.

In the circumstances I do not consider it necessary to deal with the claim in relation to paragraph (g) of section 15 (1) of the Ordinance.

*Order accordingly.*

Solicitors: *Rodyk & Davidson; Braddell Bros.*

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## CHEAH WAI POH v. CHIN BROTHERS & CO. LTD.

[O.C.J. (Syed Sheh Barakbah J.) August 8, 1958]

[Ipoh — Civil Suit No. 120 of 1958]

*Arbitration — Stay of proceedings — "Steps in the proceedings" — Unconditional appearance, if waiver — Arbitration Ordinance, 1950, s.5(1).*

Entry of unconditional appearance is not "taking any other steps in the proceedings" within the meaning of section 5(1) of the Arbitration Ordinance. "Steps in the proceedings", in the technical sense, means an application to the Court such as taking out a Summons; the act must display intention to proceed with the Suit and to give up the right to have the matter disposed of by arbitration.

*Cases referred to:—*

(1) *Sheldon v. Brown Bayley Ltd. & Anor.*, (1953) 2 All E.R. 894.
(2) *In re Orr Ewing*, 22 Ch.D. 456.
(3) *Smurthwaite & Ors. v. Hannay*, (1894) A.C. 494.
(4) *Bhowanidas-Ramgobind v. Pannachand-Luchmipat & Anor.* A.I.R. 1925 Cal. 801.
(5) *Austin & Whitley Ltd. v. S. Bowley*, 108 L.T.R. 921.
(6) *Zalinoff v. Hammond*, (1898) 2 Ch. 92.
(7) *Lane v. Herman*, (1939) 3 All E.R. 353.
(8) *Ives & Barker v. Willans*, (1894) 2 Ch. 478.

APPLICATION for stay of Action.

*W.J. Huntsman* for the plaintiff.

*S.K. Das* for the applicant (defendant).

*Cur. Adv. Vult.*

**Syed Sheh Barakbah J.:** — This is an application by the defendant for an order that all further proceedings in this action be stayed pursuant to section 5 of the Arbitration Ordinance, 1950, the plaintiff and defendant having by agreements dated the 31st day of October, 1956, and the 27th day of February, 1957, agreed to refer to arbitration the matters in respect of which this action is commenced. Clause 5 of the written agreements dated the 31st October, 1956, and the 27th February, 1957, states: "If there is any discrepancy or dispute arising out of any cause in connection with this Contract between the employer (meaning the defendant) and contractor (meaning the plaintiff), the Architect or an agreed Arbitrator shall be called upon to act as Arbitrator whose decision shall be final and binding on the parties." Section 5(1) of the Arbitration Ordinance reads:—

"5. (1) If any party to a submission or any person claiming through or under him commences any legal proceedings against any other party to the submission or any person claiming through or under him in respect of any matter agreed to be referred, any party to such legal proceedings may, before taking any other steps in the proceedings, apply to the Court to stay the proceedings."

And "submission" means a written agreement to submit present or future differences to arbitration whether an arbitrator is named therein or not. (Section 2 of the said Ordinance).

Section 5(1) of the Arbitration Ordinance, 1950, is almost identical with section 34 of the Indian Arbitration Act, 1940, section 19 of the Indian Arbitration Act, 1899, and section 4(1) of the English Arbitration Acts of 1889 and 1940.

The onus here is on the plaintiff to show why the dispute ought not to be referred to arbitration — *Annual Practice* 1958 page 3360.

The legal action was started by the plaintiff on 14th May, 1958, and the writ of summons was properly served on the defendant. On 23rd May, 1958, the defendant entered an unconditional appearance and on 30th May, 1958, this application was made.

Mr. Huntsman, counsel for the plaintiff, submitted that the defendant failed to make his application "before taking any other steps in the proceedings" as required by section 5(1) of the Arbitration Ordinance. He maintained that "any other steps" means "whatever steps." He referred to the meaning of "proceedings" in *Stroud's* Judicial Dictionary, 3rd Edition, page 2309, and the cases of *Sheldon v. Brown Bayley Ltd. & Anor.*,[1] 896 (bottom), and *In re Orr-Ewing*,[2] pages 463, 466 and 467, and contended that the entry of unconditional appearance was a step in a proceeding and that this application should have been made before entering an appearance. He added that there was a complete submission to the jurisdiction of the Court by the entry of an unconditional appearance.

In my opinion, *Sheldon's case* is not applicable here as it was made under O.12 r.30 to set aside service of a writ and the case of *In re Orr-Ewing* deals with jurisdiction of the Court. I am inclined to agree with Mr. Das, counsel for the defendant, that the jurisdiction of the Court was not challenged. The defendant was merely asking for a stay of proceedings. The learned counsel for the defendant quoted several authorities in support of his submission, namely: *Smurthwaite & Ors. v. Hannay*,[3] at page 501, *Bhowanidas-Ramgobind v. Pannachand-Luchmipat & Anor.*,[4] at page 803, *Austin & Whiteley Ltd. v. S. Bowley*,[5] *Zalinoff v. Hammond*,[6] and *Lane v. Herman*.[7]

In *Ives & Barker v. Willans*,[8] Lindley L.J. said at page 484:—

"The authorities shew that a step in the proceedings means something in the nature of an application to the Court, and not mere talk between solicitors or solicitors' clerks, nor the writing of letters, but the taking of some step, such as taking out a summons or something of that kind, which is, in the technical sense, a step in the proceedings."

Luxmoore, L.J. in *Lane v. Herman*,[7] stated, "I think what was said by Lindley, L.J. is really the best guide to what is a step in the proceedings in a case of this kind. It must be a step taken in the proceedings in the technical sense if it is to be held to bar an application for a stay under section 4."

It is stated in *Sanjiva Row's* "The Arbitration Act, 1940" 3rd Edition, 1953, at page 327: "The true test for determining whether an act is a step in the proceedings is not so much the question as to whether it is an application —

although, of course, that would be a satisfactory test in many cases — but whether the act displays an unequivocal intention to proceed with the suit and to give up the right to have the matter disposed of by arbitration."

In *Austin & Whiteley v. S. Bowley & Sons,*[5] Ridley, J. stated: "In my opinion what is intended by a step in the proceedings is some step which indicates an intention on the part of a party to the proceedings that he desires that the action should proceed and has no desire that the matter should be referred to arbitration. I cannot see how in common sense the words of section 4 can apply to something which a defendant has to do in order to save himself from having execution levied upon his goods. That is what defendants desired to do here when they gave notice to defend."

According to the learned counsel for the defendant the entry of appearance was merely to prevent judgment being obtained by default. I agree with this submission. In my opinion that is all that the defendant desired to do when he entered an unconditional appearance. I am, therefore, of the opinion that this is a proper case for granting stay of further proceedings, and I accordingly make an order in terms of the application with costs.

*Order accordingly.*

Solicitors: *Maxwell, Kenion, Cowdy & Jones; Das & Co.*

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## *Re* NOORMOHAMED VIRJIBAH VELMOHAMED, DECD.; SAKKER KHANU NOORMOHAMED MERCHANT & ANOR. v. MALEK SULTAN CALCUTTAWALA & ANOR.

[O. C. J. (Whyatt C.J.) July 23, 1958]

[Singapore — Originating Summons No. 62 of 1958]

*Will — Vesting — Pecuniary legatees — Gift of entirety to beneficiary on attaining age of 45 years — Whether legatees entitled to receive their legacies forthwith.*

By his will dated July 30, 1956, the testator who died on October 14, 1956, bequeathed a pecuniary legacy to his daughter in the following terms: "To my daughter Sakkarkhnu N. Merchant, the wife of Noormohamed Goolamusion now residing in Bombay, India, the sum of dollars thirty three thousand five hundred upon her attaining the age of forty-five years provided always that my said daughter shall receive the income arising therefrom from the date of my death until she shall attain the age of forty-five". A similar legacy of $20,000 was bequeathed to another daughter and the residue was left to a third daughter in almost identical terms. The two pecuniary legatees have attained the age of 21 years.

The question for the decision of the Court was whether the legatees are entitled to receive their legacies forthwith or whether they must first attain the age of 45 years.

Held: both the pecuniary and residuary legacies bequeathed to the testator's daughter became vested on the death of the testator since the whole of the income from the legacies was payable to the legatees from the date of the testator's death. That being so, the legatees were the absolute owners of those gifts and as such, they were entitled to all the rights of enjoyment which follow from ownership.

*Cases referred to:—*

(1) *Hanson v. Graham,* 6 Ves. 239.

(2) *In Re Parker,* 16 Ch.D. 44.

(3) *In Re Ussher,* (1922) 2 Ch. 321.

(4) *Gosling v. Gosling,* 70 E.R. 423; (1859) Johns. 265.

ORIGINATING SUMMONS.

*Y. R. Jumabhoy* for the plaintiffs.

*M. A. Lewi* for the defendants.

*Cur. Adv. Vult.*

**Whyatt C.J.:** — By his will dated the 30th July 1956, the Testator who died on the 14th October 1956, bequeathed a pecuniary legacy to his daughter in the following terms:

"To my daughter SAKKARKHNU N. MERCHANT, the wife of Noormohamed Goolamusion now residing in Bombay, India, the sum of dollars thirty three thousand five hundred upon her attaining the age of forty-five years provided always that my said daughter shall receive the income arising therefrom from the date of my death until she shall attain the age of forty-five."

A similar legacy of twenty thousand dollars was bequeathed to another daughter and the residue was left to a third daughter in almost identical terms. The two pecuniary legatees have attained the age of twenty-one years and although it does not appear from the affidavits filed in these proceedings that the residuary legatee has also attained that age, I assume counsel would have brought the fact to my notice if it were not so, and accordingly I proceed upon the assumption that she likewise has attained her majority. The short point for my decision on these facts is whether the legatees are entitled to receive their legacies forthwith or whether they must first attain the age of forty-five years.

There is no doubt that the legacies are in terms contingent since they are bequeathed upon